

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



Appeal No. 15204 of the Potomac Electric Power Company, pursuant to 11 DCMR 3105.1 and 3200.2, from the decision of Joseph F. Bottner, Jr., Zoning Administrator, made on June 8 and August 10, 1989, to the effect that the generator exhaust stack of one combustion turbine was not exempt from the height requirement of Section 840.1 of the Zoning Regulations for the installation of two combustion turbines and ancillary facilities of the Benning Generating Station in a C-M-1 District at premises 3400 Benning Road, N.E., (Parcel 169/114).

HEARING DATE: December 13, 1989
DECISION DATE: January 13, 1990

DATE OF FINAL ORDER: February 16, 1990

DATE OF DECISION ON MOTION FOR RECONSIDERATION: April 4, 1990

ORDER ON MOTION FOR RECONSIDERATION

By letter dated February 26, 1990, appellant filed a timely motion for reconsideration of the final order that was entered in this case on February 16, 1990. In support of the request for reconsideration, appellant correctly points out that in the final order, the sole basis upon which the Board upheld the decision of the Zoning Administrator is that the exhaust stack would not be completely vertical. On all other points, the Board concluded that the exhaust stack would meet the definition of a chimney.

Appellant submits that the exhaust stack would be vertical, because: (1) the stack will rise 50 feet vertically; (2) the portion that would be horizontal will be at the highest point, that is, the vertex, of the combustion turbine; and (3) the overall flow of the exhaust air will be vertical.

Appellant also observes in the motion that the Zoning Administrator initially testified that the absence of a flue was the only basis upon which he ruled that the exhaust stack would not be a chimney. The Board has found that the exhaust stack will contain a flue.

Appellant's argument is persuasive. The Board concludes that its initial decision, as reflected in the final order entered on February 16, 1990, placed excessive emphasis on one minor horizontal element of the exhaust stack, and did not soundly reflect the totality of the physical and operational nature of the stack. The Board finds the exhaust stack will be vertical.

The Board had previously concluded that the exhaust stack would satisfy all other criteria of a chimney. It follows that the Board is now constrained to conclude that the exhaust stack would be a chimney. As such, the stack would not be subject to the height limit set forth in 11 DCMR 840.1.

The Board concludes that its previous decision was erroneous insofar as it found that the exhaust stack would not be vertical, and could therefore not be a chimney. In all other respects, that decision is sound. Findings of Fact numbered 1 through 8 and 10 through 12, and Conclusions of Law numbered 1 through 10 and 12 through 14 of that decision are incorporated herein by reference.

Accordingly, it is ORDERED that the motion for reconsideration is GRANTED, and that on reconsideration, the appeal is GRANTED, and the decision of the Zoning Administrator is hereby REVERSED.

VOTE: 3-1 (William F. McIntosh, Paula L. Jewell to reconsider the decision and to grant the appeal; Tersh Boasberg to reconsider the decision and to grant the appeal by proxy; Charles R. Norris opposed to reconsideration and to granting the appeal; and Carrie L. Thornhill not voting, having recused herself).

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

ATTESTED BY:


EDWARD I. CURRY
Executive Director

FINAL DATE OF ORDER: APR 30 1990

UNDER 11 DCMR 3103.1, "NO DECISION OR ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN DAYS AFTER HAVING BECOME FINAL PURSUANT TO THE SUPPLEMENTAL RULES OF PRACTICE AND PROCEDURE BEFORE THE BOARD OF ZONING ADJUSTMENT."

15204appeal/LJP61